IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4337 OF 2004

Gaurishankar Nagnath Mhamane ... Petitioner

Versus

State of Maharashtra ... Respondents

Mr.Surel S.Shah for the petitioner.
Mrs. M.P. Thakur, Assistant Government Pleader, for respondent Nos. 1 and 2.
Mr. A.P. Kulkarni for respondent No.3.

CORAM: **KSHITIJ R. VYAS, C.J.** &
DR. D.Y. CHANDRACHUD, J.

DATE: **MARCH 27, 2006**.

P.C.

Rule. The respondents waive service. With the consent of the parties, Rule is taken up for hearing forthwith.

2. The petitioner served as a Head Clerk in respondent No.4-School. On 20th December, 2002, a complaint was filed against the petitioner and others under the Scheduled Castes, Scheduled Tribes Prevention of Atrocities Act, the Protection of Civil Rights Act, read with the Indian Penal Code. The petitioner was in police custody from 2nd January, 2003 to 6th January, 2003 and thereafter till 17th January,

2003, he remained in judicial custody. On 29th March, 2003, pursuant to a representation made by the original complainant, respondent No.2 directed respondent No.4 to initiate action against the petitioner under the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter "the Rules"). The petitioner was suspended with effect from 17th April, 2003. It appears that pursuant to a representation dated 1st November, 2003, made by the petitioner, respondent No.4 informed the petitioner by letter dated 17th December, 2003, to resume duties from 3rd November, 2003, subject to pre-sanction from respondent No.2. It further appears that respondent No.2 by letter dated 12th January, 2004, informed respondent No.4 that the power to reinstate an employee vests with the institution and asked them to proceed as per the Rules.

3. A Division Bench of this Court in *Madhukar Namdeo Patil* vs. *Chairman, Sudhagad Education Society and others* [2000 (4) Mh. L.J. 206) has observed as under.

> "Rule 35 (5) lays down that an employee "shall be considered as under suspension" (i) where proceedings have been taken on a criminal charge against the employee or (ii) where the employee is detained under any law for the time being in force providing for preventive detention. Sub-rule (5) however is qualified by the period during which the employee shall be regarded as under suspension. The said sub-rule stipulates that the

> employee in such a case shall be considered as under suspension for any period during which he is under preventive detention or where he is detained in police or judicial custody for a period exceeding forty-eight hours or is undergoing imprisonment. In a case where, as in the present facts, the employee is in police or judicial custody, he shall be considered as under suspension when the period of custody exceeds 48 hours. Moreover, the suspension can only be for the period during which the employee is in police or judicial custody and only if the period of such custody exceeds 48 hours. In other words, the period of suspension under the provisions of sub-rule (5) of rule 33 must necessarily come to an end once the period of judicial or police custody is terminated. Suspension under rule 33 (5) is not an indefinite suspension during the pendency of a criminal prosecution. That was not the intention underlying the framing of rule 33 (5) and the words used in the said rule militate against an interpretation which extends the period of suspension to the pendency of the criminal proceedings. The period of suspension under rule 33 (5) comes to an end once an employee ceases to be in police or judicial custody."

4. In view of this, it is clear that suspension of employee after the police or judicial custody came to an end would be contrary to the provisions of Rule 33 (5) of the Rules, which restrict the operation of suspension to the period during which the employee was in judicial custody. It is to be noted that the petitioner was acquitted in the criminal proceedings by the learned II Ad-hoc Additional Sessions Judge, Solapur, by his judgment and order dated 31st August, 2004 in Special Case No. 5 of 2003. There is no disciplinary case pending against the petitioner. In view of the fact that no inquiry is pending against the

petitioner, in our opinion, the petitioner is entitled to not only reinstatement but other consequential benefits in view of the law laid down in Madhukar Namdeo Patil (supra).

5. In view of the above, respondent No.4 is directed to reinstate the petitioner forthwith, if not already reinstated, and be paid all consequential benefits. Rule is accordingly made absolute.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.